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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

No. CR 13-0068 WHA

Plaintiff,

v.

LEONICIO GONZALEZ-BARRAGAN,

Defendant.

**ORDER DENYING MOTION
TO REDUCE SENTENCE
UNDER AMENDMENT 794
AND SEEKING A RESPONSE
FROM THE GOVERNMENT
AND PROBATION
RE AMENDMENT 782**

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In July 2013, the undersigned judge sentenced defendant Leonicio Gonzalez-Barragan.

On November 1, 2015, the United States Sentencing Commission passed Amendment 794 to the sentencing guidelines, which identified several factors to be considered in applying a “minor role” adjustment to defendants’ offense level in drug cases, which had been applied inconsistently before the amendment.

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Amendment 794 “resolved a circuit split, and was intended as a clarifying amendment.” *United States v. Quintero-Leyva*, 823 F.3d 519, 523 (9th Cir. 2016). *Quintero-Leyva* held that Amendment 794 applied retroactively in direct appeals, but it did not address whether it could apply to motions for reduced sentences. The only appropriate motion for a sentencing reduction in this context would be under Section 3582. See *Hamilton v. United States*, 67 F.3d 761, 763 (9th Cir. 1995). A clarifying amendment is not retroactive for a motion under Section 3582. *United States v. Stokes*, 300 Fed. Appx. 507, 508 (9th Cir. 2008); see also *United States v. Nunez*, No. 13-cr-00383, 2017 WL 119169, at *6 (N.D. Cal. Jan. 12, 2017) (Chief Judge Phyllis Hamilton) (addressing the same issue regarding Amendment 794). Notably, Amendment 794

United States District Court

For the Northern District of California

1 has not been given retroactive effect for the purposes of a motion for a sentence reduction under
2 Section 3582 inasmuch as it is not listed among the covered amendments in U.S.S.G. 1B1.10(d)
3 that warrant a reduction pursuant to that section.

4 Gonzalez-Barragan now moves, pro se, under Section 3582(c) for a reduction of his
5 sentence pursuant to Amendment 794. Because, as stated, Amendment 794 does not have
6 retroactive effect for such motions, defendant's motion on that theory is **DENIED**.

7 Although Gonzalez-Barragan's petition primarily addresses Amendment 794, the final
8 section also seeks relief under Amendment 782. The United States and the Probation Office
9 will please respond to that particular request by **JUNE 15, AT NOON**.

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IT IS SO ORDERED.

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Dated: May 16, 2017.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE